

AMENDED IN SENATE MARCH 20, 2017

**SENATE BILL**

**No. 242**

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**Introduced by Senator Skinner**

February 6, 2017

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An act to add Chapter 29.1 (commencing with Section 5900) to Part 3 of Division 7 of the Streets and Highways Code, relating to the Property Assessed Clean Energy program.

LEGISLATIVE COUNSEL'S DIGEST

SB 242, as amended, Skinner. Property Assessed Clean Energy ~~program.~~ *program: program administrator.*

Existing law authorizes applicants, defined as including specified public agencies, entities administering Property Assessed Clean Energy (PACE) financing programs on behalf of and with the written consent of public agencies, or financial institutions, to assist property owners in financing the installation of distributed generation renewable energy sources, electric vehicle charging infrastructure, or energy or water efficiency improvements through the issuance of PACE bonds that are secured by voluntary contractual assessments, voluntary special taxes, or special taxes on property.

*The bill would require a program administrator that administers a PACE program on behalf of a public agency to comply with certain requirements when approving an assessment contract for the installation of an eligible measure, as well as the administration of that contract, including requiring the contract to comply with specified criteria and requirements. The bill would require a program administrator to obtain a sworn statement, signed under penalty of perjury, containing specified financial information from a property owner and to underwrite an assessment contract, and would prohibit a program administrator from*

*approving an assessment contract if it determines that the property owner is unlikely to be able to make payments on that contract. By requiring that statement to be sworn under penalty of perjury this bill would expand the crime of perjury and would therefore impose a state-mandated local program. The bill would require a program administrator to provide an oral confirmation of the key terms of an assessment contract with the property owner or an authorized representative of the property owner before authorizing a contractor to commence work to install the measure. The bill would require a program administrator for each PACE Program that it administers to establish and make publicly available an eligible measure list that has been approved by the sponsoring public agency, and would prohibit the program administrator from approving PACE assessments for a measure that is not included on that list, unless the program administrator establishes a custom measure in accordance with specified requirements.*

*The bill would prohibit a contractor or other 3rd party from advertising the availability of an assessment contract that is administered by a program administrator, or from soliciting property owners on behalf of the program administrator, unless specified requirements are met. The bill would prohibit a program administrator from providing direct or indirect cash payments or anything of a material value to a contractor or 3rd party that is in excess of the actual price charged to the property owner for the sale or installation of measures financed by an assessment contract, except for reimbursement of expenses as provided. The bill would also prohibit a program administrator from providing direct or indirect cash payments or anything of a material value to a property owner that is explicitly conditioned upon the property owner entering into the assessment contract. The bill would prohibit a program administrator from making any representation as to the tax deductibility of an assessment contract, unless that representation is consistent with applicable state and federal law. The bill would prohibit a program administrator from providing information that discloses the maximum PACE assessment amount for which a property has been approved to a contractor or 3rd party engaged in soliciting assessment contracts for that program administrator.*

*The bill would require a program administrator to provide the property owner payment forbearance of a PACE assessment if the property owner and a mortgage lender had reached an agreement to*

*provide forbearance, as specified. The bill would require a program administrator, for each PACE program that it administers, to submit a report, at least annually, to the public agency that contains specified information regarding that program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~This bill would state that it is the intent of the Legislature, in order to ensure that PACE programs continue to effectively meet their public purposes, to enact legislation to enhance the requirements, guidelines, and procedures to which PACE programs administered by 3rd parties must conform.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Chapter 29.1 (commencing with Section 5900)*  
2     *is added to Part 3 of Division 7 of the Streets and Highways Code,*  
3     *to read:*

4  
5             *CHAPTER 29.1. CLEAN ENERGY ASSESSMENT CONTRACTS*

6  
7                     *Article 1. General Provisions*

8  
9     5900. *The provisions of this article shall apply exclusively to*  
10  *residential real property with three or fewer units.*

11  5901. *The provisions of this chapter shall not apply to any*  
12  *public agency.*

13  5902. *For purposes of this chapter:*

14     (a) *“Ancillary work” means the improvement of real property*  
15  *made in connection with the installation of a measure.*

16     (b) *“Assessment contract” means an agreement entered into*  
17  *between one or more owners of real property and a public agency*  
18  *in which, for voluntary contractual assessments imposed on the*  
19  *real property, the public agency provides a PACE assessment for*

1 *the installation of one or more measures on the real property in*  
2 *accordance with a PACE program.*

3 (c) *“Custom measure” means a measure that is not on the*  
4 *eligible measure list of a program administrator for a PACE*  
5 *program.*

6 (d) *“Eligible measure list” means, for each PACE program, a*  
7 *list of all measures other than custom measures that have been*  
8 *approved for a PACE assessment by a program administrator.*

9 (e) *“Measure” means one or more improvements on real*  
10 *property that may be made pursuant to an assessment contract*  
11 *under a PACE program.*

12 (f) *“PACE assessment” means the provision of funds by a public*  
13 *agency for the installation of one or more measures pursuant to*  
14 *an assessment contract that is secured by a lien on the real*  
15 *property.*

16 (g) *“PACE program” means a program in which financing is*  
17 *provided for the installation of measures on real property and*  
18 *funded through the use of property assessments, as well as other*  
19 *program components defined in this section, established pursuant*  
20 *to any of the following:*

21 (1) *Chapter 29 (commencing with Section 5898.10) of Part 3*  
22 *of this code.*

23 (2) *The Mello-Roose Community Facilities Act of 1982 (Chapter*  
24 *2.5 (commencing with Section 53311) of Part 1 of Division 2 of*  
25 *Title 5 of the Government Code).*

26 (3) *A charter city’s constitutional authority under Section 5 of*  
27 *Article XI of the California Constitution.*

28 (h) *“Program administrator” means an entity administering a*  
29 *PACE program on behalf of, and with the written consent of, a*  
30 *public agency.*

31 (i) *“Public agency” means a city, county, city and county,*  
32 *municipal utility district, community services district, community*  
33 *facilities district, joint powers authority, sanitary district, sanitation*  
34 *district, or water district, as defined in Section 20200 of the Water*  
35 *Code, that has established or participates in a PACE program,*  
36 *and utilizes a program administrator.*

Article 2. Assessment Contract Requirements

5910. A program administrator shall not submit, present, or otherwise approve for signature by a public agency an assessment contract unless that assessment contract complies with paragraphs (1) and (2) of subdivision (e) of Section 53328.1 of the Government Code and Sections 5898.16 and 5898.17 of this code, and the following additional criteria are met:

(a) All property taxes for the property that will be subject to the assessment contract are current for the previous three years or since the current owner acquired the property, whichever period is shorter.

(b) The property that will be subject to the assessment contract has no recorded involuntary liens in excess of one thousand dollars (\$1,000).

(c) The property that will be subject to the assessment contract has no notices of default outstanding.

(d) Any property owner that will execute the assessment contract is not a party to any bankruptcy proceeding.

(e) The property owner that will execute the assessment contract is current on all mortgage debt that is secured by the property that will be subject to the assessment contract.

(f) The property owner that will execute the assessment contract is the title holder of record on the property that will be subject to the assessment contract.

(g) The property that will be subject to the assessment contract is within the geographical boundaries of the applicable PACE program.

(h) The PACE assessment will be for less than 15 percent of the current market value of the property, up to the first seven hundred thousand dollars (\$700,000) of the current market value of the property, and for less than 10 percent of the remaining current market value of the property above seven hundred thousand dollars (\$700,000). Market value for purposes of this subdivision shall be determined in a reasonable and good faith manner.

(i) The total PACE assessment and mortgage-related debt on the property subject to the assessment contract will not exceed the market value of the property. Market value for purposes of this subdivision shall be determined in a reasonable and good faith manner.

1     (j) *The maximum term of the assessment contract shall not*  
2 *exceed the useful life of the measure being installed.*

3     (k) *The property owner agrees to notify the program*  
4 *administrator if the property owner has authorized additional*  
5 *PACE assessments on the same subject property. The failure of a*  
6 *property owner to comply with this subdivision shall entitle the*  
7 *program administrator to recover from the property owner the*  
8 *amount of any funds that the program administrator has advanced*  
9 *to or on behalf of that property owner.*

10     5911. *A program administrator shall obtain a sworn statement,*  
11 *signed under penalty of perjury, of income and debt obligations*  
12 *from each property owner seeking an assessment contract, and*  
13 *shall underwrite each assessment contract to determine the*  
14 *property owner's ability to make payments on that assessment*  
15 *contract. A program administrator shall not approve an assessment*  
16 *contract if it determines that the property owner is unlikely to be*  
17 *able to make all payments on the assessment contract.*

18     5912. (a) *Before a program administrator authorizes a*  
19 *contractor to commence work to install a measure, the program*  
20 *administrator shall make an oral confirmation of the key terms of*  
21 *the assessment contract with at least one property owner or*  
22 *authorized representative of the property owner. That oral*  
23 *confirmation shall include, but is not limited to, all of the following*  
24 *information:*

25         (1) *The measure being installed is being financed by a PACE*  
26 *assessment.*

27         (2) *The total estimated annual costs the property owner will*  
28 *have to pay under the assessment contract, including applicable*  
29 *fees.*

30         (3) *The estimated date that the first payment will be due.*

31         (4) *The term of the assessment contract.*

32         (5) *That payments on the assessment contract will be made*  
33 *through taxes assessed on the real property and paid either directly*  
34 *to the county assessor's office or through the property owner's*  
35 *mortgage impound account.*

36         (6) *That the property will be subject to a lien during the term*  
37 *of the assessment contract.*

38         (7) *That the property owner understands and affirms the*  
39 *financial information that he or she has provided, and that he or*

1 *she has the financial means to make payments on the assessment*  
2 *contract in addition to their other expenses.*

3 *(8) That the program administrator does not provide tax advice,*  
4 *and that the property owner should seek professional tax advice*  
5 *if he or she has questions regarding the impact on the PACE*  
6 *assessment or assessment contract.*

7 *(9) That the obligations under the assessment contract may (A)*  
8 *remain on the property or (B) be required to be paid in full before*  
9 *the property owner sells or refinances the property.*

10 *(b) The program administrator shall comply with both of the*  
11 *following when giving the oral confirmation described in*  
12 *subdivision (a):*

13 *(1) The program administrator shall record the oral*  
14 *confirmation in an audio format in accordance with applicable*  
15 *laws.*

16 *(2) The program administrator may not comply with the*  
17 *requirement in subdivision (a) through the use of a prerecorded*  
18 *message, or other similar device or method.*

19 *5913. A program administrator may not waive or defer the*  
20 *first payment on an assessment contract. A property owner's first*  
21 *assessment payment shall be due no later than the tax year*  
22 *following the calendar year in which the installation of the measure*  
23 *is completed.*

24  
25 *Article 3. Eligible projects; Contractor Oversight; Transfer of*  
26 *Bonds*  
27

28 *5920. (a) A program administrator shall not offer a PACE*  
29 *assessment for a measure that is not both of the following:*

30 *(1) Permanently affixed to real property.*

31 *(2) Consistent with criteria of the PACE program through which*  
32 *the assessment contract is made available.*

33 *(b) Before a program administrator authorizes a contractor to*  
34 *commence work to install a measure, the program administrator*  
35 *or contractor shall confirm that the measure is included on the*  
36 *applicable eligible measures list or has been approved as a custom*  
37 *measure pursuant to subdivision (c) of Section 5921.*

38 *5921. (a) For each PACE program that it administers, a*  
39 *program administrator shall establish, maintain, and make publicly*  
40 *available an eligible measure list that has been approved by the*

1 *sponsoring public agency, and shall establish suitable procedures*  
2 *for the inclusion, maintenance, and removal of information*  
3 *included on the eligible measure list. The eligible measure list*  
4 *shall at minimum include the following information for each*  
5 *measure appearing on that list:*

6 *(1) A name or description.*

7 *(2) Eligibility criteria, including performance thresholds,*  
8 *certification requirements, and installation criteria.*

9 *(3) Expected useful life.*

10 *(b) A measure shall not be included on an eligible measure list*  
11 *unless the program administrator has determined that the measure*  
12 *complies with both of the following:*

13 *(1) It is consistent with the scope of the PACE program.*

14 *(2) It meets one or more standards or certification criteria that*  
15 *have been established by appropriate government agencies, such*  
16 *as the United States Department of Energy, the United States*  
17 *Environmental Protection Agency, and the California Energy*  
18 *Commission, or by appropriate private organizations that publish*  
19 *generally acceptable standards with respect to the measure.*

20 *(c) A program administrator may offer PACE assessments for*  
21 *a measure not included in the eligible measure list if that*  
22 *administrator does both of the following:*

23 *(1) Establishes, maintains, and makes publicly available an*  
24 *application process, that has been approved by the sponsoring*  
25 *public agency, to permit a contractor or property owner to request*  
26 *a PACE assessment for a custom measure.*

27 *(2) Establishes, maintains, and makes publicly available*  
28 *guidelines, that have been approved by the sponsoring public*  
29 *agency, by which the program administrator shall review and*  
30 *approve the application for a custom measure. Those guidelines*  
31 *shall identify minimum requirements and criteria that must be met*  
32 *in order for a custom measure to be approved, and shall be*  
33 *consistent with subdivision (b).*

34 *(d) A PACE assessment shall not be used for ancillary work*  
35 *unless both of the following requirements are met:*

36 *(1) The scope of the ancillary work is directly related to and*  
37 *necessary for the installation of a measure.*

38 *(2) The cost of the ancillary work does not exceed the cost of*  
39 *the eligible measure.*



1     5922. (a) A program administrator shall not permit contractors  
2 or other third parties to advertise the availability of assessment  
3 contracts that are administered by the program administrator, or  
4 to solicit property owners on behalf of the program administrator,  
5 unless both of the following requirements are met:

6     (1) The contractor or third party maintains in good standing  
7 an appropriate license from the Contractors State Licensing Board,  
8 as well as any other permits, licenses, or registrations required  
9 for engaging in its business in the jurisdiction where it operates,  
10 and maintains the required bond and insurance coverage pursuant  
11 thereto.

12     (2) The program administrator obtains the contractor or third  
13 party's written agreement that the contractor or third party will  
14 act in accordance with applicable advertising and marketing laws  
15 and regulations, and all other applicable law.

16     (b) A program administrator shall not be liable for the failure  
17 of a contractor or other third party to maintain applicable licenses,  
18 permits, or registrations or to act in accordance with applicable  
19 law.

20     5923. (a) Except as provided for in subdivision (b), a program  
21 administrator shall not provide any direct or indirect cash payment  
22 or other thing of material value to a contractor or third party in  
23 excess of the actual price charged by that contractor or third party  
24 to the property owner for the sale and installation of one or more  
25 measures financed by an assessment contract.

26     (b) A program administrator is permitted to reimburse  
27 documented expenses to a contractor or third party for approved  
28 cobranded advertising and marketing campaigns and collateral,  
29 leads, reasonable entertainment expenses, training, and training  
30 events.

31     (c) A program administrator shall not provide any direct cash  
32 payment or other thing of value to a property owner explicitly  
33 conditioned upon that property owner entering into an assessment  
34 contract.

35     5924. A program administrator shall not make any  
36 representation as to the tax deductibility of an assessment contract  
37 unless that representation is consistent with the Internal Revenue  
38 Service, or applicable state tax agency, representations, statements,  
39 or opinions with regard to the tax treatment of PACE assessments.

1 5925. A program administrator shall not provide to a  
2 contractor or third party engaged in soliciting assessment contracts  
3 on its behalf any information that discloses the maximum PACE  
4 assessment amount for which a property owner has been approved.

5 5926. This chapter does not prevent a program administrator;  
6 at its discretion and sole expense, from doing any of the following:

7 (a) Assigning to a third party its right to close, fund, or  
8 administer an assessment contract.

9 (b) Securitizing its interest in bonds issued pursuant to one or  
10 more assessment contracts.

11 (c) Purchasing, selling, assigning, or taking assignment of an  
12 interest in bonds issued pursuant to one or more assessment  
13 contracts, or securities backed by assessment contracts.

#### 14 15 Article 4. Forbearance

16  
17 5930. Upon presentation of an agreement of forbearance or  
18 payment holiday between a mortgage lender and a property owner,  
19 a program administrator shall provide to the property owner a  
20 payment forbearance of the PACE assessment for the same term  
21 as the mortgage lender in accordance with the program  
22 administrator's customary servicing practices, not to exceed 12  
23 months.

#### 24 25 Article 5. Reporting

26  
27 5931. (a) For each PACE program that it administers, a  
28 program administrator shall submit a report at least annually to  
29 the public agency that shall contain the following information:

30 (1) The number of properties that received PACE assessments.

31 (2) The aggregate dollar amount of PACE assessments received.

32 (3) The installed measures.

33 (4) Rates of default and delinquency.

34 (5) Data pertaining to homeowner eligibility.

35 (6) Estimated amount of energy savings.

36 (7) Estimated amount of renewable energy produced.

37 (8) Estimated amount of water savings.

38 (9) Estimated amount of greenhouse gas emissions reductions.

39 (10) Estimated number of jobs created.

1     **(b)** *The program administrator shall make available to the*  
2 *public agency all methodologies and supporting assumptions or*  
3 *sources relied upon in the report.*

4     **(c)** *All reports submitted pursuant to this section shall include*  
5 *only aggregate data, and shall not include any nonpublic personal*  
6 *information.*

7     **SEC. 2.** *No reimbursement is required by this act pursuant to*  
8 *Section 6 of Article XIII B of the California Constitution because*  
9 *the only costs that may be incurred by a local agency or school*  
10 *district will be incurred because this act creates a new crime or*  
11 *infraction, eliminates a crime or infraction, or changes the penalty*  
12 *for a crime or infraction, within the meaning of Section 17556 of*  
13 *the Government Code, or changes the definition of a crime within*  
14 *the meaning of Section 6 of Article XIII B of the California*  
15 *Constitution.*

16     ~~**SECTION 1.** The Legislature finds and declares all of the~~  
17 ~~following:~~

18     ~~**(a)** Existing law authorizes the legislative body of a public~~  
19 ~~agency to determine that it would be convenient, advantageous,~~  
20 ~~and in the public interest to designate an area within the public~~  
21 ~~agency within which authorized public agency officials and~~  
22 ~~property owners may enter into voluntary contractual assessments~~  
23 ~~to finance specified improvements, including the installation of~~  
24 ~~distributed generation renewable energy sources, energy or water~~  
25 ~~efficiency improvements, seismic strengthening improvements,~~  
26 ~~and electric vehicle charging infrastructure that are permanently~~  
27 ~~fixed to real property, as specified.~~

28     ~~**(b)** These programs operate as Property Assessed Clean Energy~~  
29 ~~(PACE) programs, which have been identified by the Legislature~~  
30 ~~since 2008 as important to helping the state achieve its energy and~~  
31 ~~climate change goals by increasing the deployment of renewable~~  
32 ~~energy, decreasing greenhouse gas emissions by increasing the~~  
33 ~~energy efficiency of homes, helping reduce dependence on~~  
34 ~~groundwater and other water resources during the drought, and~~  
35 ~~increasing the availability of non-carbon-emitting vehicles on the~~  
36 ~~road.~~

37     ~~**(c)** Since 2008, PACE programs have operated at the direction~~  
38 ~~of hundreds of municipalities or government agencies, have~~  
39 ~~facilitated efficiency and energy generation improvements to over~~  
40 ~~50,000 residential properties in California, with financing totaling~~

1 more than one billion dollars (\$1,000,000,000), and have facilitated  
2 efficiency and energy generation improvements to hundreds of  
3 commercial properties as well. These improvements support  
4 thousands of jobs in California.

5 (d) Improvements facilitated through PACE programs have  
6 reduced greenhouse gas emissions in California by billions of tons,  
7 reduced energy usage by billions of kilowatts, and conserved  
8 billions of gallons of water.

9 (e) PACE programs are important to helping the state achieve  
10 its targeted goals for energy efficiency, renewable energy  
11 generation, and the reduction of greenhouse gas emissions, as  
12 described in the California Global Warming Solutions Act of 2006  
13 (Chapter 488 of the Statutes of 2006) and the Clean Energy and  
14 Pollution Reduction Act of 2015 (Chapter 547 of the Statutes of  
15 2015).

16 SEC. 2.

17 SEC. 3. In order to ensure that Property Assessed Clean Energy  
18 (PACE) programs continue to effectively meet their public  
19 purposes, it is the intent of the Legislature to enact legislation to  
20 enhance the requirements, guidelines, and procedures to which  
21 PACE programs administered by third parties must conform.